

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GONZALO V.,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2011060493

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 15, 2011, in Los Angeles.

Gonzalo V.¹ (claimant) was present; he was represented by his authorized representative, Odilon Urtiz,² and he utilized the services of an interpreter, Silene Conceicao.

Johanna Arias-Bhatia, Fair Hearing Manager, represented South Central Los Angeles Regional Center (Service Agency or SCLARC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 15, 2011.

¹ Initials and family titles are used to protect the privacy of claimant and his family.

² Mr. Urtiz, who served as claimant's authorized representative at hearing, also serves as the Community Resources Manager at Partnership for Active Living Services (PALS), the provider of the services at issue in this matter.

ISSUE

Whether the Service Agency may terminate funding for claimant's independent living skills (ILS) services.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-8; claimant's exhibits A-G.

Testimony: Rafael Palma, SCLARC service coordinator; claimant Gonzalo V.

FACTUAL FINDINGS

1. Claimant is a non-conserved 25-year-old man, born on February 1, 1986, who is a consumer of SCLARC based on his qualifying diagnosis of an unspecified level of mental retardation. Claimant lives at home with his parents and an older brother; two other brothers live out of the family home. He is considered high-functioning:

He takes care of all his personal care including dressing, bathing, and grooming and hygiene. He is able to focus on tasks and activities for more than 30 minutes. He is verbal. His main language is English, but he also speaks Spanish. He does not present any behavioral challenges.

(Ex. 4.)

2. Claimant receives Service Agency funding for 30 hours per month of ILS instruction provided by PALS, at a rate of \$30.28 per hour. He has received funding for ILS since 2005. Claimant also receives Service Agency funding for a sheltered work program at Ability First and for transportation to and from that program. Ability First has offered claimant the opportunity to work in the community, through a supported employment program, but claimant declined the offer, preferring to continue to work in the sheltered work environment.

3. Rafael Palma has served as claimant's service coordinator at the Service Agency for the past six to eight years; he first authorized funding for claimant's ILS program.

4. At a meeting on April 23, 2010, attended by claimant, Mr. Palma, Maggie Ortega, claimant's case manager at Ability First, and one of claimant's brothers, claimant informed Mr. Palma and Ms. Ortega that "[he] is content living with his parents. He has no interest in living independently." (Ex. 5.)

5. On February 23, 2011, Mr. Palma met with claimant at Ability First to conduct an annual Individual Program Plan (IPP) review. Ms. Ortega was also present. One of claimant's brothers usually attends the annual meetings; on this occasion, however, after being informed of the meeting by Mr. Palma, claimant's mother informed Ms. Ortega that no one from the family would be attending.

6. At that annual review meeting, Mr. Palma asked claimant whether he wanted to move out of the family home and live independently. Claimant said he had no intention of moving out. Mr. Palma told claimant that the Service Agency intended to terminate funding for claimant's ILS program because claimant had been in the program for five or six years and services were time-limited and, since claimant had no near-term plans to move out, continued funding would violate the Service Agency's new purchase of services (POS) guidelines. Claimant agreed to the termination of services and said he would not appeal. Claimant's Comprehensive Triennial & PCIPP, reflecting the February 23, 2011, review, states that claimant "no longer qualifies [for ILS] due to changes in POS guidelines and lack of progress; therefore, service is cancelled. Client declined to pursue legal action." (Ex. 4.) An IPP addendum signed by claimant and Mr. Palma on February 23, 2011, states that claimant "will no longer receive ILS services due to changes in SCLARC's POS manual and because he has had program for a long time." (Ex. 1.) It further states that claimant agrees to the termination of ILS, that he will continue to receive independent living skills training from his family members, and that he will not appeal the termination. (*Id.*)

7. The IPP addendum was signed by a SCLARC program manager on May 9, 2011. On May 18, 2011, claimant submitted to SCLARC a Fair Hearing Request, appealing the termination of ILS and requesting that aid be paid pending a hearing.³

8. Mr. Palma testified that ILS is intended to train consumers in skills that will allow them to live independently; once a consumer is living independently, he or she may receive funding for supported living services. ILS is a transitional service and is not designed to continue indefinitely. Mr. Palma testified that if claimant develops a definite plan to move out of the family home and live independently, he will qualify for ILS funding.

9. Claimant has not made significant progress in developing the skills necessary to live independently, nor have his ILS goals changed a great deal. Over the past five or six years at PALS, claimant has still not learned to prepare meals, though he can now make sandwiches; his mother prepares most of his food. He knows that he must pay for purchases, but he cannot understand change and requires assistance. (Ex. 8.) He also requires assistance doing his laundry and putting money in the washing machine and dryer. He needs assistance with personal hygiene. His family provides transportation for him, or his ILS instructor accompanies him on public transportation. He cannot drive and he cannot read

³ The Service Agency did not send claimant a notice of proposed action (NOPA) because claimant had agreed to the termination of services.

English or Spanish. His parents and his ILS instructor help him with his medical appointments.

10. Claimant's family is very supportive of him; claimant testified that he loves his parents, that they help him a lot, and that he likes living with them. Claimant testified that he feels comfortable with his ILS instructor, who accompanies him on the bus and on shopping trips to the mall, and who has been teaching him words from a driving instruction manual. Claimant testified that Mr. Palma did not explain the reasons for the termination of ILS funding and that he was not comfortable when he signed the IPP addendum. He admitted, however, that he had told Mr. Palma and Ms. Ortega at the February 23, 2011, meeting that he wanted to continue living at his family home. He testified that he would like to live on his own some time in the future, perhaps in 10 years, that he has saved \$400, that he does not know how much it costs to rent an apartment, and that one day he would like to be married and have children.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's decision to terminate funding for ILS. Jurisdiction in this case was thus established. (Factual Findings 1-7.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, identifying which party has the burden of proof is a somewhat murky affair. Claimant agreed to the termination of services, so the Service Agency did not send claimant a NOPA; this would seem to favor the position that claimant's fair hearing request is in fact a new request for services and that claimant has the burden of proof. But it appears that the Service Agency did not hold an IPP meeting upon receiving claimant's request, treating the request instead as if it were a fair hearing request after a NOPA and continuing to provide ILS funding pending the decision in this matter. Even assuming, without deciding the matter, that the Service Agency bears the burden of proving, by a preponderance of the evidence, that it is entitled to terminate funding for claimant's ILS, the Service Agency has satisfied that burden. (Evid. Code, § 115.)

3. The Lanterman Act is a comprehensive statutory scheme to provide "[a]n array of services and supports . . . which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community." (§ 4501.) The services and supports should "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (*Id.*)

4. The services and supports to be provided to a consumer are determined in the IPP process on the basis of the needs and preferences of the consumer and a consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

5. Claimant did not establish by a preponderance of the evidence that he is entitled to funding for ILS services. Claimant has made little progress in developing independent living skills after approximately five years of ILS services. Nor does claimant wish to live independently or have any plan to live independently in the foreseeable future; he is content to continue to live with his family. (Factual Findings 4, 6, 8-10.) Given claimant's speculative and remote prospects for independent living, and based on his lack of desire to do so and his minimal progress over the past five years in learning the necessary skills to do so, the continued provision of ILS services is unnecessary at this time.

ORDER

Claimant's appeal is denied. SCLARC is not required to fund claimant's ILS services.

DATED: August 16, 2011

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.